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RECO TR

DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Propst Pharmaceuticals, LLC

2.13.02

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State Alabama, Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment, Merger, Security Agreement, Change of Name, Other

Execution Date: August 14, 2000

2. Name and address of receiving party(ies)

Name: Forest Pharmaceuticals, Inc.

Internal Address:

Street Address: 909 Third Avenue

City: New York State: NY Zip: 10022

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State Delaware, Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2509656

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Melissa Cooper

Internal Address: Dornbush Mensch Mandelstam & Schaeffer, LLP

Street Address: 747 Third Avenue

City: New York State: NY Zip: 10017

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41).....\$ 40

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Signature

11/11/02

Name of Person Signing

Date

16

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into on this 14th day of August, 2000 by and between Vintage Pharmaceuticals, Inc., an Alabama corporation (the "Buyer") and Forest Pharmaceuticals, Inc., a Delaware corporation (the "Seller").

WHEREAS, the Seller desires to sell and the Buyer desires to buy certain Products as hereinafter described.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**ARTICLE I**

**Definitions**

Where used in this agreement, the following terms shall have the following meanings:

**1.01 Agreement** - Means this agreement, all schedules to this agreement and any amendment to or confirmation of this agreement.

**1.02 FDA** - Means The United States Food and Drug Administration.

**1.03 NDA** - Means a new drug application approved by the United States Food and Drug Administration.

**1.04 ANDA** - Means an abbreviated new drug application approved by The United States Food and Drug Administration.

**1.05 Approved** - Means FDA approval with respect to the manufacture of the Products, and **Approval** has a corresponding meaning.

**1.06 Intellectual Property** - Means all patents, trademarks, copyrights, industrial designs, inventions, licenses, including applications for all of the foregoing and renewals, divisions, extensions, and reissues, where applicable, relating thereto, and trade secrets relating to the Products.

**1.07 Know-How** - Means all data, information, expertise, manufacturing, mixing and production procedures, technical assistance, and shop rights, not otherwise generally known, relating to the testing, registration, manufacturing, sales, marketing and use of the Products, and includes:

- a) characteristics, selection, judgment of properties, and data relating to materials for the manufacture of the Products;
- b) processes, techniques, equipment, and methods used or useful in the manufacture and quality control testing of the Products; and
- c) stability data and all data relating to the packaging of the Products.

**1.08 Manufacturing** - Means to process, prepare, make, test, package, and label; **manufacturing** has a corresponding meaning.

**1.09 Parties** - Means Vintage Pharmaceuticals, Inc. and Forest Laboratories, Inc.; and **party** means either of them.

**1.10 Territory** - Means the world. Notwithstanding anything to the contrary herein set forth, Seller makes no representation, warranty or covenant with respect to its ownership of or rights to convey any assets related to the products in any country of the world except the United States of America.

**1.11 The Products** - Means those specific pharmaceutical products presently owned, manufactured and marketed by The Seller under the following names (LOGOS):

1. Endal <sup>™</sup> tablets
2. Endal <sup>™</sup> Expectorant
3. Endal <sup>™</sup> HD
4. Endal <sup>™</sup> HD Plus

## ARTICLE II

### Sale of Assets

**2.01 Purchased Assets.** Subject to the terms and conditions contained herein, the Seller agrees to sell, assign, transfer and convey all rights, title and interest to the Buyer and the Buyer agrees to purchase and acquire from the Seller at the closing all rights and interest to the Products, which shall include all formulations, manufacturing know-how, quality control

methods for analysis, the name of each product, trademarks, all intellectual property, all promotional material, customer lists, price lists, purchase history, NDA and ANDA approvals, and all regulatory filings directly and solely related to the Products. Inventory of Seller is specifically excluded from this sale.

### ARTICLE III

#### Purchase Price

3.01 Purchase Price and Payment Terms. In consideration of the sale and transfer of all rights, title, interest and ownership in the Purchased Assets, the Buyer agrees to pay to the Seller the total purchase price of Two million four hundred ninety-two thousand (\$2,492,000) dollars, hereafter referred to as the "Total Purchase Price".

a) The Total Purchase Price of \$2,492,000, shall be payable as follows:

- 1) One hundred thousand (\$100,000) dollars paid upon the signing of this Agreement, receipt of which the Seller hereby acknowledges;
- 2) Four hundred seventy-four thousand (\$474,000) dollars payable on or before March 31, 2001, Seller's fiscal business year end;
- 3) Four hundred sixty-three thousand (\$463,000) dollars payable by or before March 31, 2002;

- 4) Three hundred seventy-two thousand (\$372,000) dollars payable by or before March 31, 2003;
- 5) Two hundred ninety-nine thousand (\$299,000) dollars payable by or before March 31, 2004;
- 6) Two hundred thirty-nine thousand (\$239,000) dollars payable by or before March 31, 2005;
- 7) A final payment of Five hundred forty-five thousand (\$545,000) dollars payable in one lump sum on or before March 31, 2005.

The above itemized annual payments, after March 31, 2001 and except the final lump sum payment of \$545,000, shall be paid quarterly, within forty-five (45) days of the end of each calendar quarter to which such payment relates.

### 3.02 Acceleration of Payment.

a) In the event that, prior to the payment in full of the Total Purchase Price, Buyer defaults in the payment of any installment of Purchase Price when due, which default is not cured within 20 days of the furnishing by Seller of written notice thereof, Buyer discontinues the sale of the Products or transfers any of Buyer's rights to market and distribute the Products to any third party (or, without limiting the generality of the foregoing, Buyer discontinues the sale of Endal HD or transfers Buyer's rights to market Endal HD to any third party, except an affiliated or related entity), Buyer shall pay to Seller, within 20 days of such default, discontinuance or transfer, an amount equal to the difference between (i) the total Purchase Price previously paid to

Seller by Buyer and (ii) the Total Purchase Price (the "Acceleration Amount").

b) In the event that, prior to the payment in full of the Total Purchase Price, Buyer is subject to a Change in Control, as hereinafter defined, or files a petition in bankruptcy (or has any such petition filed against it which petition is not dismissed within 45 days) Buyer shall pay the Acceleration Amount to Seller within 20 days of such Change in Control or bankruptcy. For purposes of this Section, a "Change in Control" shall mean the following: (1) the acquisition by any person or entity, except an affiliated or related entity of Buyer, of 50% or more of the voting equity interests in Buyer; (2) the merger or consolidation of Buyer with or into any other person or entity, except a person or entity that specifically assumes Buyer's obligations hereunder and which person or entity is no less credit worthy than Buyer; (3) sale by Buyer of all or substantially all of Buyer's business or assets, except as provided for herein and except for sales of assets in the ordinary course of business.

**3.04 Security Interest.**

In order to secure Buyer's obligation to pay the Total Purchase Price when due (including quarterly installments of Purchase Price and payment of the Acceleration Amount, if and when required, Buyer hereby grants Seller a security interest in and to all of the assets purchased pursuant to this Agreement, including the proceeds and products thereof, owned by Buyer and wherever located. Buyer hereby agrees to execute such further documents and instruments as Seller may hereinafter reasonably request in order to confirm and perfect the grant of such security interest to Seller.

## ARTICLE IV

### Representations and Warranties

4.01 Seller's Representations. The Seller hereby represents and warrants as follows:

a) The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

b) The Seller owns and holds the complete and valid title to the Purchased Assets as described in Section 1.11 and 2.01, and has the complete and unrestricted power and the unqualified right to sell, convey, transfer and deliver them to the Buyer. At the Closing, the Buyer will acquire complete and valid title to the Products and the Purchased Assets, free and clear of any liens, encumbrances or claims of third parties.

c) The Seller has full corporate power and authority to execute, deliver and perform this Agreement and each of the Transaction Documents to be entered into by it at Closing, and such execution, delivery and performance has been duly authorized by all necessary and proper corporate action of the Seller. This Agreement has been duly executed and delivered by the Seller and is the valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms.

d) The Seller represents that it has maintained all regulatory files in accordance with the FDA regulations and that the documentation in the regulatory files are true and accurate.



e) The Seller represents and warrants that as of the time of the signing of this Agreement, it has received no claims or notice of claims from third parties with respect to the Products or Purchased Assets. The Seller agrees to notify the Buyer, in writing, if it receives any claims or notice of claims from third parties with respect to the Products or Purchased Assets between the time of signing this Agreement and the Closing Date.

f) Notwithstanding the representations set forth in subsections (d) and (e) above, Seller's liability for such representations and warranties shall be limited to the obligations of indemnity set forth in Section 5.01 hereof.

**4.02 Buyer's Representations.** The Buyer hereby represents and warrants as follows:

a) The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Alabama.

b) The Buyer has full corporate power and authority to execute, deliver and perform this Agreement and each of the transaction documents to be entered into by it at the Closing, and such execution, delivery and performance has been duly authorized by all necessary and proper corporate action of the Buyer. This Agreement has been duly executed and delivered by the Buyer and is the valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms.

c) The Buyer will pay to the Seller the Total Purchase Price, payable as set out in Section 3.01.

## ARTICLE V

### Indemnification

#### 5.01 Indemnity by Seller.

a) The Seller hereby agrees to indemnify and hold the Buyer, its directors, officers, employees, and agents harmless against and with respect to any and all claims, losses, injuries, damages, deficiencies, liabilities, obligations, assessments, judgments, cost and expenses, including cost and expenses of litigation and reasonable attorneys' fees ("Losses"), suffered or incurred by the Buyer to the extent caused approximately by: (i) any material breach of any representation or warranty of the Seller contained in this Agreement or in any of the transaction documents; and (ii) any Products Liability or similar claims in respect to the Products or Purchased Assets prior to the Closing, except to the extent such claims arise from any negligence of the Buyer in the sale, packaging, storage or transportation of such Products or Assets.

b) In no event shall Seller's liability for indemnification hereunder exceed the greater of the Total Purchase Price.

#### 5.02 Indemnity by the Buyer.

a) The Buyer hereby agrees to indemnify and hold the Seller, its directors, officers, employees, and agents harmless against and with respect to any and all claims, losses, injuries, damages, deficiencies, liabilities, obligations, assessments, judgments, cost and expenses, including cost and expenses of litigation and reasonable attorneys' fees ("Losses"), suffered or

incurred by the Seller to the extent caused approximately by: (i) any material breach of any representation or warranty of the Buyer contained in this Agreement or in any of the transaction documents; and (ii) any Products Liability or similar claims in respect of the Products or Purchased Assets after the Closing, except to the extent such claims arise from any negligence of the Seller in the sale, packaging, storage or transportation of such Products or Assets.

**5.03 RIGHTS OF INDEMNIFYING PARTY** The party obligated to provide indemnity pursuant to Section 5.01 and Section 5.02 is hereinafter referred to as the "Indemnifying Party." Promptly after the receipt by any party hereto of notice of any claim or the commencement of any action or proceeding, such party will, if a claim with respect thereto is to be made against the party obligated to provide indemnification pursuant to Article V hereof, give such Indemnifying Party written notice of such claim or the commencement of such action or proceeding. Such Indemnifying Party shall have the right at its option, to compromise or defend, or at its own expense or by its counsel, any such matter involving the asserted liability of the party seeking such indemnification. Such notice, and the opportunity to compromise or defend, shall be a condition precedent to any liability of the Indemnifying Party under the Indemnification Agreement contained in said Article V. In the event any Indemnifying Party shall undertake to compromise or defend any such asserted liability, it shall promptly notify the party seeking indemnification of its intention to do so, and the party seeking indemnification agrees to cooperate fully with the Indemnifying Party and its counsel in the compromise of, or defense, any such asserted liability. In any event, the Indemnified Party shall have the right, at its own expense, to participate in the defense of such asserted liability, provided that the Indemnifying Parties counsel shall make all final

decisions concerning the defense or compromise or settlement of such litigation.

Each of the parties hereto shall be entitled to be represented at any proceedings brought by the other party under this Article V by its own counsel, at its own expense, and shall fully cooperate with the other party in any such proceeding, provided it is adequately reimbursed for its out of pocket costs and expenses, excluding attorneys' fees.

**5.04 RETURNED GOODS.** Unless otherwise determinable, returned goods received by either party within three (3) months of the Closing shall be presumed to be the responsibility of the Seller and returned goods received by either party thereafter shall be presumed to be the responsibility of the Buyer. The Buyer agrees not to materially change the returned goods policy applicable to the products from the policies of Seller until the expiration of three (3) months from the Closing.

## ARTICLE VI

### Closing

**6.01 Closing Date.** The Closing of this purchase and sale of the Purchased Assets pursuant to this Agreement shall take place on August 21, 2000, at a location to be mutually agreed upon by the parties.

**6.02 Closing Deliveries.** Seller agrees to deliver to the Buyer at the Closing, such instruments of transfer, in the customary form and substance, reasonably satisfactory to the Buyer, as shall be necessary and appropriate to effectuate the conveyance

to the Buyer of the Products and the Purchased Assets, duly executed by the Seller.

**6.03 Post-Closing Deliveries.** The Seller agrees, at the request and expense of the Buyer, to make, execute, acknowledge and deliver all such other and further instruments of conveyance, assignments, transfer, consent and assumption as the Buyer may reasonably require to confirm conveyance and transfer to the Buyer of any of the Purchased Assets.

## ARTICLE VII

### Miscellaneous

**7.01 FDA Notification.** The Seller shall notify the FDA of the perfection of its sale of the Purchased Assets to the Buyer. The Seller shall comply with all FDA rules, regulations and procedures for the proper and lawful transfer of title in and to the Purchased Assets to the Buyer.

**7.02 Entire Agreement.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and shall supercede and abrogate all prior Agreements, oral or written, and shall be binding upon and inure to the benefit of the parties', their successors and/or assigns. It may not be modified in anyway without the written consent of both parties.

**7.03 Jurisdiction.** The parties agree that they shall each, by executing this Agreement, submit themselves to the jurisdiction of the U.S. District Court for the Northern District of Alabama or the U.S. District Court for Northern District of New York for purposes of resolving any dispute relative to the terms or

enforcement of this Agreement. Venue shall be in Alabama or New York, depending upon the State in which the Complaint is filed.

**7.04 Controlling Law.** The terms and conditions of this Agreement and all of the rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Delaware.

**7.05 Notices.** All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed to have been duly given upon delivery in person, or one business day after the same shall have been sent by overnight messenger service, or three business days after the same shall have been mailed by registered or certified mail, postage prepaid, return receipt requested, to the respective parties at the following addresses:

If to the Buyer: William S. Propst, Sr., President  
Qualitest Pharmaceuticals, Inc.  
1236 Jordan Road  
Huntsville, Alabama 35811

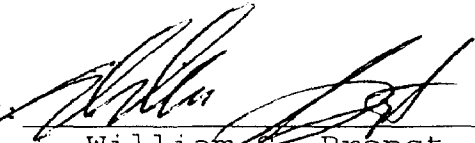
With a copy to: George M. Beason, Jr., Esq.  
115 North Side Square  
P.O. Box 19048  
Huntsville, Alabama 35804-9048

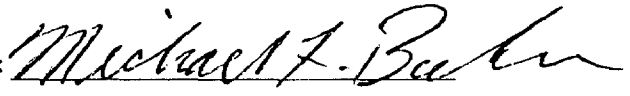
If to the Seller: Herschel S. Weinstein, Esq.  
Dornbush, Mensch, Mandelstam  
& Schaeffer, LLP  
747 Third Avenue  
New York, New York 10017  
Fax: (212) 753-7673

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

VINTAGE PHARMACEUTICALS, INC.

FOREST PHARMACEUTICALS, INC.

By:   
\_\_\_\_\_  
William S. Propst, Sr.  
Its: President

By:   
\_\_\_\_\_  
Its: Executive Vice President

STATE OF ALABAMA )  
COUNTY OF MADISON )

I the undersigned, a Notary Public in and for the State of Alabama at Large, hereby certify that **William S. Propst, Sr.**, whose name as **President of Vintage Pharmaceuticals, Inc.**, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he/she, as such representative, and with full authority, executed the same voluntarily for, and as the act of, said corporation, acting in said capacity, as aforesaid.

22<sup>nd</sup> Given under my hand and official seal of office this the day of August, 2000.

Sharon Gilliam  
Notary Public  
My Commission Expires:  
5-25-2003

STATE OF NEW YORK )  
COUNTY OF NEW YORK )

I the undersigned, a Notary Public in and for the State of New York at Large, hereby certify that Michael Baker whose name as Executive Vice President of **Forest Pharmaceuticals, Inc.**, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he/she, as such representative, and with full authority, executed the same voluntarily for, and as the act of, said corporation, acting in said capacity, as aforesaid.

18 Given under my hand and official seal of office this the day of August, 2000.

Barbara A. Gaser  
Notary Public  
My Commission Expires:  
**BARBARA A. GASER**  
**Notary Public, State of New York**  
**No. 24-4791665**  
**Qualified in Kings County**  
**Commission Expires August 31, 10-2001**